

REMARKS

By this Amendment, claims 1, 26, and 27 have been amended and claims 6-19 remain canceled. Accordingly, claims 1-5 and 20-29 are pending in the present application.

Applicants have carefully reviewed and considered the Examiner's Action mailed June 23, 2009. Based on the foregoing amendments and the following remarks, the Applicant s respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Objections to the Drawings

On page 2 of the Office Action, the drawings are objected to under 37 C.F.R. § 1.83(a) for failing to show "descriptive legends" as described in the specification. Applicants have amended the drawings to include legends. These amended drawings follow page 10 of this document. Thus, Applicants respectfully request that this objection be withdrawn.

Objections to the Claims

On page 3 of the Office Action, claims 1, 26, and 27 were rejected due to informalities. Claims 1, 26, and 27 have been amended. Thus, Applicants respectfully request that this rejection be withdrawn.

Rejections under 35 U.S.C. §103

On pages 3 and 4 of the Office Action, claims 1, 2, 3, 5, 20, 21, 23, 25, and 29 are rejected under 35 U.S.C. §103(a) as being unpatentable over French Application No. 2836270 to Kluba (hereinafter referred to as "Kluba") in view of one of ordinary skill in the art. Applicants respectfully disagree.

Regarding claim 1, Applicant submits that Kluba in view of one of ordinary skill in the art does not teach or suggest the claimed invention for at least the following three reasons.

First, Kluba in view of one of ordinary skill in the art does not teach or suggest "a programming apparatus comprising [] an input unit [] to specify[ing] the transmitter code for a transmitter by selecting a receiver code of the associated receiver," as recited in claim 1. Instead, Kluba teaches away from this claim element.

In contrast to claim 1, Kluba discloses a system comprising a programming unit 6, several remote controls 4 and several central access devices 8. Kluba, pg. 4, l. 21-24. The remote control 4 contains a transponder 20 and a radio communication device 22 which contains a single identifier 32. Kluba, pg. 5, l. 20-22 and pg. 9, l. 4-5. This single identifier 32 is recorded in memory 30 and, once recoded, is not modified during the configuration of the central access device (described below). Kluba, pg. 9, l. 14-15.

According to Kluba, the remote 4 and the central access 8 are configured using in a multi-step process. Kluba, pg. 8, l. 25-26 and Fig. 2. The first step 110 of the process consists of configuring the remote control 4 so that the access codes (i.e. the single identifier 32) in transponder 20 of remote 4 is identical to the access codes in unit 22, which is also contained in remote control 4. Kluba, pg. 9, l. 4-8. Specifically, in operations 120 through 128, the programming unit 6 reads identifier 32 out of memory 30 and temporarily stores the identifier in a memory of the computer 100 (operation 120, Kluba, pg. 9, l. 10-12), reads out configuration information from memory 30 (operations 122 and 124, Kluba, pg. 9, l. 14-18), and records the identifier 32 in memory 58 of remote control 4 along with other configuration information (operation 126 and 128, pg. 9, l. 20 through pg. 10, l. 1-3),

In step 112, **the programming unit 6 reads the identifier 32 out of the remote control 4 and recorded in the list 88 in the central access 8.** Kluba, pg. 10, l. 5.

In steps 114 and 116, a user requests entry to a building 10 via door 80. Once the user makes a request by pressing button 62 of the remote 4, the identifier 32 is transmitted by the remote 4 and is received by the central access 8. Kluba, pg. 10, l. 7-9 and 15-18. Once received, the identifier 32 is compared with those identifiers contained in the list 88. Kluba, pg. 10, l. 9-10 and 18-20. If the received identifier 32 matches an identifier in the list 88, the door is opened. Kluba, pg. 10, l. 12-13 and 18-20.

Therefore, in contrast to claim 1, Kluba teaches a programming unit 6 which facilitates recording the single identifier 32 from the remote control 4 (i.e. a transmitter) into a central access unit 8 (i.e. a receiver). Claim 1, however, recites the opposite. Specifically, claim 1 recites "a programming apparatus comprising [] an input unit [] to **specify[ing] the transmitter code for a**

transmitter by selecting a receiver code of the associated receiver,” as recited in claim 1. Kluba, therefore, teaches away from the claimed invention.

Second, Kluba does not inherently disclose “wherein the computer unit is operative to mask the receiver code specified as a transmitter code and to block the masked receiver code from being further issued as a transmitter code,” as recited in claim 1. With respect to inherency, “[w]hen the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.” In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the prima facie case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. In re Best, 562 F.2d at 1255, 195 USPQ at 433; *See also* MPEP 2112.01.

In contrast to claim 1, Kluba, as discussed above, teaches a programming unit 6 which reads out a single identifier 32 of a remote control 4 and records the single identifier in list 88 contained within the central access 8. Kluba, pg. 10, l. 5. When a request for entry is submitted, the remote control 4 transmits the identifier 32 which is received by the control access 8 and compared to those identifiers 32 contained in the list 88. Kluba, pg. 10, l. 9-10 and 18-20.

It is important to note that Kluba does not discuss how a specific identifier is selected for storage in a specific remote control 4 or whether each individual remote 4 has a unique or common identifier 32. Instead, Kluba focuses exclusively on how a single identifier 32 from a remote control 4 (i.e. a transmitter) is recorded into a central access 8 (i.e. the receiver). For example, Kluba mentions that an identifier 32 is recorded in a memory 30 of a remote 4 during the manufacture of the remote 4, but does not address how a particular identifier 32 is determined or whether a particular identifier 32 may be common to more than one remote 4. Kluba, pg. 21-23.

In actuality, it is possible, and perhaps advantageous, for various implementations of Kluba to use identifiers common to a first and a second remote control. Therefore, the process of recording single identifiers 32 into a central access 8 of Kluba does not necessarily possess the characteristics of the claimed device. Specifically, Kluba does not inherently “mask the receiver code specified as a transmitter code and to block the masked receiver code from being further issued as a transmitter code,” as recited in claim 1.

Third, the Final Office Action fails to establish a prima facie case of obviousness since the Office Action's inherency argument on pages 3-4 engages in explicit and improper hindsight reasoning. On page 3-4, the Final Office Action argues that the selection of an identifier 32 is inherently the selection of a unique code which functionally masks the code and prevents/blocks the transmitter code from being issued again. However, as noted above, Kluba does not disclose or suggest how identifiers 32 are selected, whether each remote control 4 receives a unique identifier 32 or whether a remote control 4 may receive an identifier 32 common to at least one other remote control 4. Thus, Applicant submits that without the aid of the claimed design, it would not have been obvious to modify Kluba as the Final Office Action suggests. In fact, the Final Office Action expressly incorporates knowledge gleaned only from the claimed device (i.e. masking a receiver code from being further issued as a transmitter code) into its rejection. The incorporation of knowledge gleaned only from the applicant's disclosure is based on hindsight and is therefore improper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Therefore, Applicants submit that claim 1 is not anticipated by Kluba in view of one of ordinary skill in the art for at least the reasons stated above. Reconsideration and withdrawal of the rejection of claim 1 is therefore respectfully requested.

Dependent claims 2, 3, 5, 20, 21, 23, 25, and 29 depend on claim 1 and are believed to be allowable for at least the same reasons as above. Therefore, Applicant respectfully requests that the above rejection of claims 2, 3, 5, 20, 21, 23, 25, and 29 be withdrawn and that claims 2, 3, 5, 20, 21, 23, 25, and 29 be allowed.

On pages 5 and 6 of the Office Action, claims 4, 22, 23, 24 and 28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kluba in view U.S. Patent No. 5,473,318 to Martel (hereinafter referred to as "Martel") or U.S. Patent No. 6,697,719 to Stouffer (hereinafter referred to as "Stouffer").

Dependent claims 4, 22, 23, 24 and 28 depend on claim 1 and are believed to be allowable for at least the same reasons as above as neither Martel nor Stouffer teach, disclose, or otherwise suggest the features of claim 1, which are not disclosed by Kluba, as discussed above. Therefore,

Applicant respectfully requests that the above rejection of claims 4, 22, 23, 24 and 28 be withdrawn and that claims 4, 22, 23, 24 and 28 be allowed.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Dated: September 23, 2009

Respectfully submitted,

By: /Robert Kinberg/
Robert Kinberg
Registration No.: 26,924
VENABLE LLP
P.O. Box 34385
Washington, DC 20043-9998
(202) 344-4000
(202) 344-8300 (Fax)
Attorney/Agent For Applicant

#1047468v1